

CHALEASE FINANCE, CORPORATION, PETITIONER, VS. SPOUSES ROMEO I. MA AND MARIAFE L. MA, RESPONDENTS.*G.R. No. 151941. August 15, 2003*

Ponente: YNARES-SANTIAGO, J.

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Respondents, the spouses Romeo and Mariafe Ma, obtained a loan in the amount of P3,500,000.00 from the Chinatrust (Phils.) Commercial Banking Corporation. As security for the loan, they executed a real estate mortgage over their two parcels of land covered by Transfer Certificates of Title Nos. 68587 and 68390, situated in Barangay Kay Biga, Parañaque City. They defaulted in the payment of their obligations, prompting the said bank to institute extrajudicial foreclosure proceedings against their real estate mortgage.

At the sale at public auction held on June 30, 1999, petitioner Chailease Finance Corporation was declared the highest bidder. A Certificate of Sale was issued in its name on the same date, and registered with the Register of Deeds for Parañaque City on July 9, 1999.[1]

Respondents failed to redeem the properties within the one-year period. Consequently, on August 23, 2000, title to the properties was consolidated in the name of petitioner.[2] On November 10, 2000, respondents' TCT Nos. 68587 and 68390 were cancelled and, in lieu thereof, TCT Nos. 146693 and 146692, respectively, were issued in the name of petitioner.[3]

Petitioner demanded that respondent spouses vacate the properties,[4] but the latter failed and refused to do so. Thus, petitioner filed an "Ex Parte Petition for the Issuance of a Writ of Possession"[5] with the Regional Trial Court of Parañaque City, Branch 257, which was docketed as LRC Case No. 01-0055.

On December 4, 2001, the trial court rendered a decision denying the petition for issuance of a writ of possession.[6] Petitioner filed a motion for reconsideration, which was likewise denied by the trial court in an Order dated January 22, 2002.[7]

Hence, this petition for review on pure questions of law. Petitioner argues that the trial court erred in denying the petition for issuance of writ of possession on the ground of failure to prove the basis of the foreclosure sale; and contends that the issuance of the writ of possession was the ministerial duty of the trial court.

We find merit in the petition.

A writ of possession is generally understood to be an order whereby the sheriff is commanded to place a person in possession of a real or personal property, such as when a property is extrajudicially foreclosed.[8] In cases of extrajudicial foreclosure sales of real estate mortgage, the issuance of a writ of possession is governed by Section 7 of Act No. 3135, which provides:

Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period

of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

The above provision explicitly authorizes the purchaser in a foreclosure sale to apply for a writ of possession during the redemption period by filing an ex parte motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title. Upon the filing of such motion and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession.[9]

It has been consistently held that the issuance of a writ of possession is a ministerial function.[10] The order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond.[11] The court neither exercises its official discretion nor judgment. If only to stress the writ's ministerial character, we have, in previous cases, disallowed injunction to prohibit its issuance, just as we have held that issuance of the same may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.[12]

A writ of possession may also be issued after consolidation of ownership of the property in the name of the purchaser. It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of sale. As such, he is entitled to the possession of the property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. In such a case, the bond required in Section 7 of Act No. 3135 is no longer necessary. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.[13] Thus:

As the purchaser of the properties in the extra-judicial foreclosure sale, the PNCB is entitled to a writ of possession therefor. The law on extra-judicial foreclosure of mortgage provides that a purchaser in an extra-judicial foreclosure sale may take possession of the foreclosed property even before the expiration of the redemption period, provided he furnishes the necessary bond. Possession of the property may be obtained by filing an ex parte motion with the regional trial court of the province or place where the property or part thereof is situated. Upon filing of the motion and the required bond, it becomes a ministerial duty of the court to order the issuance of a writ of possession in favor of the purchaser. After the expiration of the one-year period without redemption being effected by the property owner, the right of the purchaser to the possession of the foreclosed property becomes absolute. The basis of this right to possession is the purchaser's ownership of the property. Mere filing of an ex parte motion for the issuance of the writ of possession would suffice, and no bond is required.[14]

In the case at bar, petitioner sufficiently established its right to the writ of possession. More specifically, it presented as documentary exhibits the Certificate of Sale,[15] the annotations thereof at the back of respondents' titles,[16] the Affidavit of Consolidation proving that respondents failed to redeem the properties within the one-year redemption period,[17] the titles issued in the name of petitioner,[18] and petitioner's demand on respondents to vacate the properties.[19]

The trial court, however, denied the ex parte petition for the issuance of a writ of possession on the ground of failure of petitioner to prove the existence of the loan, the execution of the real estate mortgage and the fact of default of respondents. It ruled:

Petitioner did not present or offer as evidence the promissory note, real estate mortgage, statement of account and demand letter. The said documents are deemed necessary as basis of the unpaid claim and the foreclosure sale. But it is not clear whether said documents were executed at all. Without them this Court is not fully convinced that the petition for writ of possession should be granted.[20]

This was error. The judge to whom an application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure. In the issuance of a writ of possession, no discretion is left to the trial court. Any question regarding the cancellation of the writ or in respect of the validity and regularity of the public sale should be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135,[21] to wit:

Sec. 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Number Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

Until the foreclosure sale of the property in question is annulled by a court of competent jurisdiction, the issuance of the writ of possession remains the ministerial duty of the trial court. Hence, the trial court erred in denying the petition for issuance of writ of possession on the grounds stated.

WHEREFORE, in view of the foregoing, the instant petition for review is GRANTED. The decision dated December 4, 2001 of the Regional Trial Court of Parañaque City, Branch 257 in LRC Case No. 01-0055, and its Order dated January 22, 2002, are REVERSED and SET ASIDE. The trial court is DIRECTED to issue the writ of possession prayed for by petitioner.

SO ORDERED.

Davide, Jr., C.J., Vitug, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 20-21.

[2] Id., pp. 22-23.

[3] Id., pp. 24-25.

[4] Id., p. 26.

[5] Id., pp. 16-19.

[6] Id., pp. 33-35; penned by Judge Rolando G. How.

[7] Id., p. 367.

[8] A.G. Development Corporation v. Court of Appeals, 346 Phil. 136, 141 [1997].

- [9] Sulit v. Court of Appeals, 335 Phil. 914, 924 [1997].
- [10] Suico Industrial Corporation v. Court of Appeals, 361 Phil. 160, 171 [1999].
- [11] Yulienco v. Court of Appeals, G.R. No. 141365, 27 November 2002; Ong v. Court of Appeals, G.R. No. 121494, 8 June 2000, 333 SCRA 189, 198 [2000].
- [12] Manalo v. Court of Appeals, G.R. No. 141297, 366 SCRA 752, 768.
- [13] Vda. de Zaballero v. Court of Appeals, G.R. No. 106958, 9 February 1994, 229 SCRA 810, 814; citing F. David Enterprises v. Insular Bank of Asia and America, G.R. No. 78714, 21 November 1990, 191 SCRA 516, 523.
- [14] Laureano v. Bormaheco, Inc., G.R. No. 137619, 6 February 2001, 351 SCRA 270, 275-276.
- [15] Exh. "D".
- [16] Exhs. "B-1" and "C-1".
- [17] Exh. "E".
- [18] Exhs. "F" and "G".
- [19] Exh. "H".
- [20] Rollo, pp. 34-35.
- [21] China Banking Corporation v. Ordinario, G.R. No. 121943, 24 March 2003; Dayrit v. Philippine Bank of Communications, G.R. No. 140316, 1 August 2002.

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